

Issue – Forestry - Riparian Protections

The State of Oregon does not have management measures on forestry lands that adequately protect riparian areas of medium, small and non-fish bearing streams, including intermittent streams, to ensure attainment of water quality standards and full beneficial use support.

Ex. 5 - Deliberative

Background

NOAA/EPA's January 13, 1998 letter to the State

In NOAA/EPA's January 13, 1998 letter to the State, the agencies identified areas where existing practices under Oregon's Forest Practices Act and Oregon's Forest Practices Rules should be strengthened to attain water quality standards and fully support beneficial uses. These areas included:

- ***Protections for medium, small and non-fish bearing streams, including intermittent streams;***
- Protections for areas at high risk for landslides;
- The ability of forest practices to address cumulative impacts of forestry activities;
- Road density and maintenance, particularly on so-called legacy roads; and
- The adequacy of stream buffers for application of certain chemicals.

Significance of the Issue

Specific to riparian protections our letter stated that:

"Under existing State forest practices, medium, small and non-fish bearing streams may be subject to loss of sediment retention capacity, increases in delivery of fine sediments, and increases in temperature due to loss of riparian vegetation. Another concern is provision of adequate long-term supplies of large woody debris in medium, small and non-fish bearing streams, a shortage of which can

result in decreased sediment storage in upstream tributaries, increased transport and deposition downstream and overall adverse impacts to beneficial uses.

NOAA/EPA also addressed “cumulative effects” in that correspondence:

“Cumulative effects of increased water temperature, sediment transport, road density, hydrological modification, and other factors can manifest themselves at a larger system scale and have adverse effects over an entire watershed or basin, rather than at a particular site or stream reach. The scope and pattern of these types of effects have recently become much more apparent through the use of watershed and landscape analysis. Cumulative effects are a concern not only within the forestry sector but across all land use or management measure categories within a watershed.”

NOAA/EPA’s April 12, 2004 letter to the State

NOAA/EPA determined that Oregon had not yet fully satisfied the condition requiring the State to identify and begin applying additional management measures for forestry in several areas critical to water quality protection.

October 2004

EPA testifies at the BOF meeting for greater protections for supporting additional changes to riparian protections and for landslides.

November 2005

EPA testifies at the BOF supporting rule concepts.

June 2008 Interim Letter to DEQ and DLCD

- Still did not have forestry mms to address riparian concerns
- Also recommended that EQC to petition the BOF to initiate a “Basin Rule” change review to address inadequacies in the FPA management measures that are contributing to violations of water quality standards. The BOF cannot terminate the Basin Rule change review without the concurrence of the EQC. The Basin Rule change provision has not been used by the EQC.

January 2009 – NWEA sues NOAA and EPA

August 2009 letter to DEQ and DLCD – follow up to a June 17, 2009 conference call with DEQ and DLCD regarding approaches for addressing outstanding issues. Letter indicates that

- Oregon’s forestry program lacks adequate measures for protecting riparian areas of medium, small and non-fish bearing streams;

October 2009 DEQ submits draft approach to use IR TMDL approach

May 2010 NOAA/EPA supports DEQ approach

July 2010 State DOJ indicates State has authority to implement forestry provisions

September 2010 NWEA’s and NOAA/EPA sign settlement agreement

2011 DEQ asks for extension to do IR TMDL

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2012 EPA testifies at BOF to encourage rule changes for small and medium F streams and greater protections for type N streams

April 2012 kick-off for Mid-Coast IR /TMDL

Dec 2012 – “Christmas” Letter from NOAA/EPA to State reiterating conditions of settlement agreement

Feb 2013 – “Valentine Letter from State to NOAA/EPA indicating that State will not meet the schedule for developing the TMDL

December 20, 2013 Proposed Decision Letter

- NOAA/EPA stated that Oregon relies on both regulatory and voluntary measures to provide riparian protections for medium and small fish bearing streams and non-fish bearing streams;
- NOAA/EPA proposed that these measures are not adequate to protect water quality and beneficial uses;
- NOAA/EPA indicate that RipStream, Sufficiency Analysis and the IMST document the need for greater protections;
- The BOF has authority to make rule changes and until rule changes are adopted, the federal agencies cannot consider them in place;
- State must also adopt protections for Type N streams.

Key Points

- Analysis of the RipStream Study found that timber harvest on private forest lands, under the OR Forest Practices Act did not meet the State water quality standard, Protection of Cold Water Criterion (PCW), on 44% of the streams harvested on private forest lands. This study also determined that the temperature increase was up to 2.5°C at these private sites. However, this study also found that timber harvest under State Forest plan requirements met PCW. Most private and State sites had larger no cut buffers than required by OFPA rules. For private sites, greater temperature increases were generally found at sites that had riparian no cut buffers approaching the OFPA rule requirements.
- RipStream study determined likely cause of stream temperature increases to be shade loss. This study also determined that shade loss was function of riparian canopy levels and riparian height. ODF is using this study to demonstrate the need for riparian rule changes to the OFP regulations for medium and small fish bearing streams.

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Actions in the State on this Issue

- Based on findings from RipStream, Sufficiency Analysis and IMST, ODF has been working on a riparian rule analysis to determine if rule changes are needed for medium and small fish streams
- Because of recent turnover on the Oregon Board of Forestry (BOF), the BOF held a workshop to better inform new BOF members of the current data showing the water quality and beneficial use impacts of the current forest practice rules;
- Timber Industry representatives and others presented initial findings from the Paired Watershed Study in attempt to show the FP rules were ok while the State's PCW standard was not.
- DEQ along with ODFW, EPA and NMFS presented background information and data on the value and importance of the PCW
- While not all members are supportive, the BOF agreed to move forward with the riparian rule analysis
- ODF is building rule options; options to be presented to the Board in September;
- Focus will be on M&S Type F streams – not considering Type N streams;
- ODF will be considering data from Paired Watershed studies.

Note: Governor's Office recognizes a change is needed
The Population group (Family Foresters) most likely to be impacted the
greatest is well aware of the BOF's interest in establishing new rules for M&S F streams

Issue – Impacts, Constraints and Risks of not resolving the issue

Impacts

Ex. 5 - Deliberative

Constraints/Challenges

Ex. 5 - Deliberative

Ex. 5 - Deliberative

Conclusions

From 1998 to 2013 NOAA/EPA continued to find that Oregon's forestry program lacked adequate management measures for protecting riparian areas of medium, small and non-fish bearing streams;

- Public comments on NOAA/EPA's proposed decision did not provide adequate information to show that the State's existing management measures were protective of the M&S fish bearing streams and the Type N streams.
- BOF's continuation of its riparian rule analysis process indicates that the State recognizes greater protections are needed for the M&S fish bearing streams.
- BOF is silent on the needs for Type N streams.
- The BOF rule making process will likely extend beyond the deadline for NOAA/EPA to issue a final CZARA decision.
- If the BOF rule making does precede the deadline for the CZARA decision, the rule making will not likely contain protections for Type N streams. There is also uncertainty on how the revised rule would be applied.

Recommendation:

By January 30, 2015, NOAA/EPA should make a decision that the State's CNPCP does not contain management measures that adequately protect riparian areas of medium, small and non-fish bearing streams, including intermittent streams.

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Comment [p1]: I think you need to make this word possessive - industries’

Comment [p2]: Is this the way to do it? See comment above.

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Comment [PE4]: If possible, I'd try and summarize, at least conceptually, the main points that commenters made who were opposed to EPA's action. What were some of the reasons given to support the position that the existing management measures were protective enough? Why are those not persuasive? Are any of them new, or had all the point brought up in opposition to the EPA action already been considered in earlier parts of this process?

Recommendation:

By January 30, 2015, NOAA/EPA should make a decision that the State's CNPCP does not contain management measures that adequately protect riparian areas of medium, small and non-fish bearing streams, including intermittent streams.

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